

E-125/C-92-1207 ORDER DENYING PETITIONS FOR RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint
of Darlene Abraham Against Lyon-
Lincoln Electric Cooperative,
Inc.

ISSUE DATE: May 21, 1993

DOCKET NO. E-125/C-92-1207

In the Matter of the Complaint
of Louis Taveirne Against Lyon-
Lincoln Electric Cooperative,
Inc.

DOCKET NO. E-125/C-92-1208

ORDER DENYING PETITIONS FOR
RECONSIDERATION

PROCEDURAL HISTORY

On October 16, 1992, Darlene Abraham and Louis Taveirne (the Complainants) each filed a complaint with the Commission against Lyon-Lincoln Electric Cooperative, Inc. (Lyon-Lincoln, the Company, or the Respondent).

On February 18, 1993, the Commission issued its ORDER REQUIRING NEGOTIATIONS in this matter. In its Order, the Commission found that the facilities installed by the Respondents (two 37.5 KVA transformers, upgraded loop wire, and the meter) were required for interconnection and that imposition of some level of costs for these items does not discriminate against the Complainants. The Order did not relieve the Complainants of the responsibility to pay a reasonable amount of interconnection costs but did not find that the assessed charges were reasonable and did not direct the Complainants to pay the amounts assessed for those items by the Respondent. Instead, the Order 1) found that the parties had proceeded in violation of Commission rules which require that parties sign a uniform statewide contract before incurring interconnection costs and 2) directed the Complainants and Respondent to negotiate toward signing a complete contract, including agreement on a reasonable amount, in light of the circumstances, for the Complainants to pay Respondent for interconnection costs. The Commission provided that in the event of impasse in the negotiations, either party may request the Commission to determine the issue pursuant to Minn. Rules, Part 7835.4500.

On March 4, 1993, Complainants filed a Petition for Rehearing and/or Reconsideration.

On March 10, 1993, the Respondent filed a Petition for Reconsideration and Rehearing.

On March 15 and 17, 1993, respectively, the Minnesota Department of Public Service (the Department) and the Respondent filed replies to the Complainants' Petition.

On March 22, 1993, the Commission issued its ORDER GRANTING RECONSIDERATION, providing additional time to carefully review the petitions.

On May 6, 1993, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Complainants' Petition

1. Finding of Nondiscrimination

In their petition, Complainants alleged that the Commission erred in finding that Lyon-Lincoln's interconnection costs were not discriminatory as compared to its other residential customers. Complainants argued that the Commission's error was due in part to its not understanding the utility's policy on the imposition of service upgrade costs and partly due to an error of law.

Lyon-Lincoln's policy is to provide its customers with free service upgrade equipment, provided the service upgrade is required because of increased electrical usage. Under this policy, a QF that needs a service upgrade not to consume more electricity but to transport electricity from its generator to the utility's system does not qualify for free equipment to accomplish that. Complainants alleged that this policy discriminates against qualifying facilities (QFs).

According to the Complainants, Lyon-Lincoln's policy effectively divides customers into two groups: 1) non-QFs, which are not charged for service upgrades, and 2) QFs, which are. This practice, Complainants allege, is unreasonably discriminatory in violation of Minn. Stat. § 216B.03 (1992).

The Commission disagrees. In the Commission's view, the utility's policy divides customers into two different groups: 1) those whose service upgrade is due to increased consumption (not charged for service upgrade) and 2) those whose service upgrade is not due to increased consumption (charged for service upgrade). The non-discriminatory reason given by Lyon-Lincoln for treating these two groups differently is that the increased electrical usage from those in the first group will generate revenues to cover the cost of the upgraded facilities whereas this would not be the case for customers in the second group.

The utility also noted that the policy provides a reasonable check on customers requesting facilities that they do not need and will not pay for. The Complainant placed nothing in the record to show that the utility's explanation was merely a pretext. Given this analysis, the Commission finds that the distinction among customers in this policy is not unreasonably discriminatory as that term is used in Minn. Stat. § 216B.03 (1992).

2. Reference to PURPA¹ Regulations

The Commission understands Complainants' PURPA-based argument primarily to be 1) that the PURPA regulations may be used, not to invalidate, but as a guide to interpret and apply the Commission's QF interconnection cost rules and Minnesota's nondiscrimination statute² and 2) that such use leads to a reversal of the Commission's finding that imposition of the costs in question is not discriminatory.

The Commission is not convinced that viewing its rules and Minnesota's discrimination statute in light of the PURPA regulations leads to any different decision than the Commission made in its March 18, 1993 Order. The most directly relevant PURPA regulation [18 C.F.R. § 292.306 (a)] states that interconnection costs may only be assessed against a QF on a "nondiscriminatory basis with respect to any other customers with similar load characteristics". This language does not contradict but is simply consistent with the Minnesota statute's nondiscrimination requirement as understood by the Commission and applied in this case. In sum, having reviewed its application of the interconnection cost rule and discrimination statute in light of the PURPA regulations, the Commission finds no reason to reverse its finding of nondiscrimination.

¹ PURPA is the Public Utility Regulatory Policy Act of 1978 § 210, 16 U.S.C. § 824a-3. The PURPA regulation regarding interconnection costs is 18 C.F.R. § 292.306 (1992).

² Complainants state, for example, that the nondiscrimination standard of PURPA "...does nothing more than extend the standard of nondiscrimination imposed by Minn. Stat. § 216B.03 (1992) to QFs...." Complainants are not saying that, absent the PURPA rule, Minn. Stat. § 216B.03 (1992) would allow discrimination against QFs. Complainants appear to acknowledge that PURPA's nondiscrimination standard is the same as that imposed by Minn. Stat. § 216B.03 (1992); the only difference between the PURPA regulation and Minnesota's nondiscrimination statute is that the PURPA regulation applies the nondiscrimination standard explicitly to QFs while Minn. Stat. § 216B.03 (1992) does so implicitly.

The Commission notes that even if the federal regulations had been raised as a direct challenge to the validity of Minnesota's interconnection cost rules, the Commission would not be required to change its decision. The PURPA regulations do not require that a QF be allowed to sell electricity to its utility without paying for the additional facilities necessary to do so. Specifically relating to the adequacy of the Complainants' case, the PURPA regulation imposes a threshold requirement that a complainant have "similar load characteristics" to the nongenerating customers that it alleges are receiving discriminatory preferential treatment. In this case, Complainants have failed to make that threshold showing.

Moreover, in addition to demonstrating "similar load characteristics" between the two compared groups, the PURPA regulation does not attenuate a complainant's basic obligation to show discrimination. Complainants rest their discrimination claim on the assertion that Lyon-Lincoln charges QFs for costs that it does not charge to non-QF customers. According to Complainants, this is adequate to show that the Company's policy is discriminatory. However, not every different treatment of customers is illegal discrimination. The Company has responded that its policy requiring payment of line upgrade costs does not single out QFs but applies to all customers whose line upgrade costs will not be recovered through increased consumption.³ As explained previously, in light of Lyon-Lincoln's assertion of this reasonable, non-discriminatory reason for charging Complainants for line upgrade costs, Complainants' showing (that they are treated differently from customers whose line upgrades are required by increased consumption) is inadequate to establish illegal discrimination. Complainants have not shown that the reason given by the utility for this different treatment is unreasonable or merely a pretext for harming QFs.

2. Proposed Alternative Disposition

Complainants suggested that, in lieu of deciding whether transformer and line upgrade costs are nondiscriminatory interconnection costs, the Commission should order Lyon-Lincoln to charge these costs to its supplier. Minn. Stat. § 216B.164, subd. 3 (d) (1992) gives a nongenerating utility such as Lyon-Lincoln the right, *at its option*, to be reimbursed by its supplier for any costs incurred due to purchasing power from a QF. However, the statute clearly leaves it to the utility's discretion whether it will exercise this right. Moreover, it is doubtful that interconnection costs are the kind of costs a utility may shift to its supplier. The Commission is disinclined to explore the range of the Company's authority to seek

³ Additional support for the reasonableness of the Company's policy is the fact that Minn. Rules, Part 7835.9910 states: "...the QF is responsible for the actual, reasonable costs of interconnection."

reimbursement of the interconnection costs (or the Commission's authority to require the Company to seek such reimbursement) in view of Minn. Rules, Part 7835.9910 which states:

"...the QF is responsible for the actual, reasonable costs of interconnection."

3. Attorneys' Fees

Finally, the Complainants requested that the Commission find that they are the prevailing parties in this matter and award them their costs, disbursements and reasonable attorneys' fees. The Commission declines to do so. There has been no showing that the Complainants have been successful on any significant issue achieving some benefit they sought in bringing their complaints. As Complainants noted in their petition at page 8, prevailing party status and its attendant award of attorneys' fees was contingent upon the Commission finding that Lyon-Lincoln has discriminated against them by forcing them as QFs to agree to pay the interconnection charges for transformers and line charges. In the absence of such a finding, an award of attorneys' fees is not warranted.

B. Lyon-Lincoln's Petition

In its petition, Lyon-Lincoln argued that the Commission had erred in finding that there was insufficient evidence in the record to show that the amount it had charged Complainants for the transformers and loop wire were reasonable. The Company stated that it had provided information to the Department in response to requests for information that established the reasonable net value of the transformers, labor, salvage, and 200 amp meter loop. In light of this evidence, the Company argued, the Commission erred in finding that the level of costs which could be assessed remained open and that the parties should negotiate a contract that includes payment of a reasonable amount for interconnection costs.

The material referred to by Lyon-Lincoln was, indeed, not a part of the record at the time the Commission deliberated this matter. Although the Company served a copy of its responses on the

Complainants when it provided them to the Department, neither the Company nor the Department filed this material with the Commission. Regardless of the Company's belief, provision of information to the Department is not the equivalent of making it a part of the Commission's record. Accordingly, the Commission committed no error in finding in the February 18, 1993 Order that the record was inadequate in this area. Accordingly, the Company's petition will be denied.

Completing the Record

However, Complainants were served with a copy of these materials when they were filed with the Department and there has been no objection to the accuracy of the material. The Commission finds that Complainants are not prejudiced by its late entry into the record and will, on its own motion, receive Lyon-Lincoln's responses to the Department's information requests into the record of this case at this time. This decision properly expedites resolution of this matter on its merits; it serves the ends of both justice and administrative efficiency.

Commission Action

Upon review of the newly introduced evidence, the Commission finds that Lyon-Lincoln established and followed a responsible process in obtaining price quotations for the transformers from several electrical equipment vendors and selecting the lowest bid. The transformer price quotations obtained from vendors establish the reasonableness of the transformer costs. The cost of the transformer obtained through this process was \$764 with sales tax in the amount for \$49.66 for a total of \$813.66. The Commission finds that this is a reasonable amount for the Company to charge the Complainants for these items.

The question of what level of interconnection costs are appropriately charged the Complainants is, thus, largely resolved. In the event of impasse in the negotiations between them on the remaining interconnection costs and the manner and timing of the Complainants' payment of these costs, of course, either party may request the Commission to determine the issue pursuant to Minn. Rules, Part 7835.4500.

Finally, as noted in the February 13, 1993 Order, the Commission is not ordering the parties to do business with each other; the parties may choose to have no further dealings with each other. The parties' negotiations, however, are advanced to the extent that the Commission has found the reasonableness of part of the interconnection costs assessed against the Complainants, i.e. the cost of the two 37.5 KVA transformers. In all other respects, the Commission's Order of February 13, 1993 remains unchanged.

ORDER

1. Complainants' Petition for Rehearing and/or Reconsideration, including its request for attorney fees, is denied.
2. The Petition of Lyon-Lincoln Electric Co-operative, Inc. (Lyon-Lincoln, the Company, or the Respondent) for Reconsideration and Rehearing is denied.

3. Lyon-Lincoln's responses to Department information requests (a Material Quotation sheet dated March 9, 1992 and Schedules A and B) are hereby incorporated into the record of this matter on the Commission's own motion.
4. The reasonable value of each of the two 37.5 KVA transformers charged to the Complainants as part of their interconnection costs is found to be \$813.66.
5. In the event that the Respondent and Complainants are able to agree on the remaining terms, they shall execute a contract pursuant to Minn. Rules, Parts 7835.200, 7835.6100, and 7835.9910 and file a copy of that contract with the Commission.
6. In the event of impasse in the negotiations of the unresolved terms, either party may request the Commission to determine the issue pursuant to Minn. Rules, Part 7835.4500.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)